



City of Seattle

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Gregory J. Nickels, Mayor

**Department of Design, Construction and Land Use**

D. M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF DESIGN, CONSTRUCTION AND LAND USE**

**Application Number:** 2301722

**Applicant Name:** David Means

**Address of Proposal:** 11737 Exeter Avenue Northeast

**SUMMARY OF PROPOSED ACTION**

Master Use Permit for future construction of a second floor addition and a 30 square foot first floor/basement addition to an existing single family residence. Project includes raising the existing structure 2 feet and replacing a non-conforming deck with a new deck.

The following approvals are required:

**Variance** - to allow a portion of the principal structure to extend into required front yard (SMC 23.44.014.A).

**Variance** – to allow a portion of the principal structure to extend into required side yard (SMC 23.44.014.C).

**Variance** – to allow expansion of a non-conforming structure (SMC 23.42.106.A).

**SEPA DETERMINATION:** ☒ Exempt ☐ DNS ☐ EIS

☐ DNS with conditions

☐ DNS involving non-exempt grading or demolition  
or involving another agency with jurisdiction.

## **BACKGROUND DATA**

### **Site Description**

The subject site fronts on Exeter Avenue Northeast and Durland Avenue Northeast in northeast Seattle. The approximately 4,240 square feet triangular shaped corner lot is located in a Single Family Residential 7200 (SF 7200) zone. The eastern border of the lot has 62.42 feet of frontage along Exeter Avenue Northeast. The northernmost corner and west property line runs a distance of 131.31 feet along Durland Avenue Northeast to the rear corner of the south property line. Both 60 foot wide non-arterial streets are unimproved with no curbs, gutters or sidewalks.

The site slopes gently downward from west to east and is vegetated with grass and trees. The site is developed with a one-story single-family residence with a partial daylight basement, a covered front porch, an attached deck and a carport attached to the elevated deck. Access to the existing carport is from Durland Avenue Northeast. A corner of the existing single family structure encroaches 18 inches into the street right-of-way on Durland Avenue Northeast. It also appears that an existing attached deck built by permit in 1974 (BN49230) has been rebuilt with portions of the new deck and stairs built over the property line on Durland Avenue Northeast.

### **Development in the Vicinity**

Zoning in the vicinity of the proposal site is Single-Family residential 7200 (SF 7200) and development consists primarily of multi-story single-family homes. A majority of parcels in the immediate area appear to be less than the minimum size required for the zone.

### **Proposal Description**

The applicant is seeking a variance to do the following: elevate the existing house twenty-one inches (1'- 9"); construct new foundation walls to create additional ceiling height in the basement; construct a second story addition to match the existing building footprint; construct a new 2'-6"x 12' two-story/basement addition on the north side of the residence in the required 5' side yard area along Durland Avenue Northeast; construct an attached deck and stairs on the northwest side of the residence that encroaches onto street right-of-way along Durland Avenue Northeast; and construct an attached covered porch with stairs in the required front yard area along Exeter Avenue Northeast. The additional second story and new small addition would be a gain of 1020 square feet of additional living space and is proposed to primarily match the existing building foot print and craftsman style characteristics. The proposed deck would extend out from the main floor of the structure and over to the existing carport, providing approximately 295.6' of recreational area outside the home. The proposed front porch and stairs would be reconfigured to face Exeter Avenue Northeast.

A variance is required for this work because the existing house and deck are non-conforming with respect to the required front yard, street side yard and street right-of-way. The required front yard for the site is along Exeter Avenue Northeast and the minimum required front yard for the zone is 20 feet (20'). The code permits certain additions, with at least 60% of wall façade (and covered porch area) prior to the addition, to be extended as long as the addition is no closer

than 15'. Currently at least 60% of the house (including the covered porch and stairs) is 17' from the property line; but, the remaining portion of the covered porch is less than 60 % of the wall façade and 14' from the front property line. The applicant's uncovered stairs proposal would not meet this code exception.

The required street side yard for the site is along Durland Avenue Northeast and the minimum required side yard is five feet (5'). A portion of the house and the elevated deck encroaches fully through the street side yard; and that same portion of the house extends beyond the property line into the right-of way approximately 18". The code only permits decks less than 18" above existing or finished grade (whichever is lower) to extend into required yards and the code does not allow for any structure to be built over property lines. A Street Use Permit is required for these encroachments into the right-of-way and a permit to continue these encroachments would need to be obtained prior to approval of any permits for the proposed development. The applicant's proposed additions would not meet these code requirements. Furthermore, the applicant's proposal to lift the house 21" in order to obtain more ceiling height in the basement would not be allowed due to the code prohibiting non-conforming structures from expanding or extending in any manner that increases the extent of non-conformity.

#### Public Comment

Public notice of the proposed project ended on May 14th 2003. During this period no comment letters were received.

#### Additional Information

The Seattle Transportation Department (SDOT) has issued a public place indemnity agreement (recording #20030422000321) for the project site. SDOT also issued an annual street use permit (#Y2298) granting permission to "continue to encroach into portions of Durland Avenue Northeast, adjacent to 11737 Exeter Avenue Northeast" with the condition that "the square footage of the encroaching portions of structure (in plan view) may not increase. Maintenance, repair and remodeling is allowed." An SDOT representative, John Zavis, further clarified via phone that the proposed second-story floor area over the existing structure footprint on street-right-of-way is allowed.

#### **ANALYSIS - VARIANCES**

As provided in SMC 23.40.020, variances from the provisions or requirements set forth in the Seattle Municipal Land Use code shall be authorized only when all of the following facts and conditions are found to exist:

1. *Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;*

This 4,240 square foot proposal site is a legal non-conforming parcel located in a single-family residential zone with a 7200 square foot minimum lot area. The site is developed with a house built in 1921 that has one livable floor, a partial daylight basement that is not habitable because it does not meet building code requirements with respect to ceiling height and a portion of covered porch. The property is a triangular shaped lot. Due to substandard surveying practices when the house was built, the structure is not centered on the lot and even extends beyond the property line into the street right-of-way (Durland Avenue Northeast).

The current owner bought the house in its present condition and has not made any additions or alterations that contributed to the non-conformities of the structure. The house was built prior to the existence of the current zoning regulations and land use code requirements and was built on a small, gently sloped parcel. The vicinity around the proposal site is characterized by multi-story single-family residences. Several of the lots on the same block face in the vicinity are of a legal non-conforming size similar to the proposal site but the sites are rectangular in shape with placement of the structures accurately designed under current Land Use Code standards. In this instance, strict application of the Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity due to the conditions discussed above.

However, the proposed non-conforming additions to the existing footprint-the proposed two-story/basement addition and the front porch with stairs-would be considered new conditions created by the applicant which are not justified by the size, shape, topography, location or surroundings. The applicant has not identified other properties within the same zone or vicinity with these particular privileges.

2. *The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;*

Granting a variance to allow the construction of a second story above the existing footprint would be consistent with the limitations upon other properties. The subject site has existing structure that encroaches in the side yard and over the property line onto street right-of-way (Durland Avenue Northeast) approximately 18". The home to the south is currently separated from the subject site by an alley. This home would be the closest structure affected by the second story addition. Durland Avenue Northeast is an unimproved 60" wide non-arterial street which is larger than the 50" standard width. To allow the upward expansion of a structure along the existing façade line which a corner of the structure is entirely in the side yard and over the property line by 18" on Durland Avenue Northeast would not significantly alter the existing streetscape and thus would not be a grant of special privilege or go beyond the minimum necessary to afford relief.

Granting a variance to allow expansion of a non-conforming structure does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and zone in

which the proposed site is located. The request to raise the existing structure 21" to meet building code ceiling height requirements and rebuild a previously permitted deck will increase the vertical size and bulk of the non-conformity by a minimal amount. The proposed additions would be allowed outright pursuant to SMC 23.44.014 D 3 if the existing nonconforming part of the structure made up at least 60 percent of the north side of the house. The only way to meet this requirement would be to remove a significant portion of the house, which would be excessive. This is unfair due to the unusual triangular configuration of the existing site.

Permitting the construction of a new two-story/basement "bay window" addition on the north side of the existing residence into the required 5' side yard area along Durland Avenue Northeast would be considered a grant of special privilege. SMC 23.44.014 D 5 allows for bay windows limited to 8' in width to project no more than 2' into a required front, rear and street side yards. The applicant proposes to encroach 2'-6" into the required street side yard area. This is not a privilege allowed by other properties in the neighborhood and goes beyond the minimum necessary to afford relief.

Granting a variance to allow for the reconfiguration of the porch stairs to extend from the front porch in a perpendicular fashion towards Exeter Avenue Northeast in the required front yard would be a grant of special privilege. SMC 23.44.014 D 4 allows for uncovered porches and steps to project into any required yard provided that they are no higher than 4' on average above existing grade, no closer than 3' to any side lot line, no wider than 6' and project no more than 6' into required front or rear yard. The proposed uncovered stairs would be higher than 4' on average and both the covered porch and stairs would project a total of 12' into the required front yard. This is not a privilege allowed by other properties in the neighborhood.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located.*

The proposed second story addition over the existing footprint in the side yard and the additional length of stairs in the front yard will not be materially detrimental to the public or injurious to the property or improvements in the zone or vicinity. The increase in size and bulk of the structures will not exceed the height limit for the zone, will be difficult to see from the street due in part to large evergreens over 50 feet tall, will not affect Seattle Fire Department access to the fire hydrant located at the apex of Durland Avenue Northeast and Exeter Avenue Northeast, and will not have any apparent adverse impacts to the neighboring properties.

However, some of the aspects of the proposal could be detrimental to the public welfare. Increasing the bulk and scale of the existing structure directly onto the public right-of-way, by permitting vertical expansion of a non-conforming structure over the property line would seem to not be in the best interest of the public and would significantly alter and negatively impact the streetscape by casting an ominous shadow over a public walkway. But, in this particular instance, Seattle Transportation Department has granted

permission for this expansion and this aspect of the project is not subject to Land Use Code discretion.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties;*

Literal interpretation of the Land Use Code would require the applicant to construct an addition/remodel of the existing structure that conforms to the required front yard of 20 feet and the required street side yard of 5 feet. The second-story addition over the entire existing structure's footprint would not be allowed but would be allowed over a portion of the existing footprint less 7.5 feet. This would diminish the opportunity to gain additional floor area and portray a diagonal appearance in relation to the existing rectangular façade. The applicant would not be able to raise the existing structure which would limit the opportunity to create building code compliant headroom in the basement in an efficient and economical manner. Strict application of the requirements of the Land Use Code would result in a significant reduction in the design, flexibility, size, and massing of the structure in addition to creating structural design challenges. Therefore literal interpretation of the requirements of the Land Use Code would result in undue hardship to the applicant.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code regulations for the area.*

The owners of the subject lot are seeking three variances that, if granted, would allow the expansion of a legal nonconforming single family home. The spirit and purpose of the Land Use Code identifies flexibility as an important directive to allow the residents of single-family residential areas maximum use and enjoyment of their homes. As proposed this application has attributes that are within the spirit and purpose of the Land Use Code.

The Code contains many provisions aimed at encouraging the reuse and reconstruction of existing single family structures. Allowing the vertical expansion of the existing structure along the present façade line and construct a second-story addition over the existing footprint preserves the current character of the streetscape while encouraging reuse of a single family building and thus is consistent with the spirit of the Land Use Code.

Permitting a previously permitted deck to vertically expand into the nonconforming side yard would not result in an altered streetscape. Allowing this deck would be within the spirit or purpose of the Land Use Code.

Permitting a variance to allow the applicant to construct a new 2'-6"x 12' two-story/basement addition on the north side of the residence in the required 5' side yard area along Durland Avenue Northeast would be inconsistent with the limitations upon other properties. To allow the subject property to setback 2'-6" from the same line which adjacent structures must be at least 2' from would be inconsistent with the spirit of the Land Use Code regulations of the area.

Allowing uncovered stairs higher than 4 feet on average to encroach further into the required front yard is also inconsistent with the spirit of the Land Use Code regulations of the area.

**DECISION-VARIANCE** (based upon approved plans in the file)

The proposed variance to allow expansion of a non-conforming structure in a single family zone is **CONDITIONALLY GRANTED.**

The proposed variance to allow portion of principal structure to extend into the required front yard is **CONDITIONALLY GRANTED.**

The proposed variance to allow portion of principal structure to extend into the required side yard is **CONDITIONALLY GRANTED.**

**CONDITIONS –VARIANCE**

Prior to issuance of the MUP the applicant shall revise the official plans to reflect the following:

1. The owner is allowed to raise the entire existing non-conforming house structure upward 21” or the minimum necessary to create building code compliant habitable space in the basement.
2. The owner is allowed to construct a second story addition over the portion of existing footprint identified by survey that encroaches into the required side yard along Durland Avenue Northeast.
3. The owner is allowed to rebuild the covered front porch and uncovered stairs to the same size and configuration. Any portion of the front porch and stairs that extend beyond the existing front porch footprint noted on the survey is not allowed.
4. The owner is allowed to construct a deck addition that matches the 3’ wide portion of deck in the 5’ side yard that was previously permitted under building permit number BN49230.

5. The owner is not allowed to construct the portion of the new 2'-6" x 12' two-story/basement addition along the north wall façade that would encroach into the required side yard. This addition must be no closer than 3' to the street side property line on Durland Avenue Northeast.

Signature: \_\_\_\_\_ (signature on file) Date: July 28, 2003

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